IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

ITA.No. 181 of 2000()

ITA NO. 733/COCH/93 , INCOME TAX APPELLATE TRIBUNAL, COCHIN
M.P.NO. 94/Coch/98, INCOME TAX APPELLATE TRIBUNAL, COCHIN.

APPELLANT/ASSESSEEE:

M/S. P.V.S. HOSPITAL (PVT)LTD.,
RAILWAY STATION ROAD,
CALICUT – 673 002.
REPRESENTED BY ITS MANAGING DIRECTOR DR. T.K. JAYARAJ.

BY ADV. SRI.C.KOCHUNNY NAIR

RESPONDENTS/REVENUE:
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1. THE ASSISTANT COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE, CALICUT.

2. COMMISSIONER OF INCOME TAX (APPEALS),
CALICUT – 1.

BY ADV SRI GEORGE K. GEORGE, SC, IT.
BY ADV. SRI.P.K.R.MENON(SR.),SR.COUNSEL FOR IT

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 08/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

I.T.A. NO. 181 of 2000

Dated this the 8th June, 2007

JUDGMENT

H.L.DATTU, C.J.

This appeal is filed under Section 260A of the Income Tax Act, 1961 ('Act' for short), against the orders passed by the Income Tax Appellate Tribunal, Cochin Bench, in ITA.NO.733/1993 dated 15.2.1999, for the assessment year 1987-1988.

2. The assessee has raised the following questions, which according to it are the substantial questions of law. They are as under:

> "1) Whether the Tribunal was right in law in holding that the question whether minimum penalty need only be imposed raised and argued by the appellant must be deemed to have been decided against the appellant?
>
> 2) Whether the Tribunal was right in holding so when there is no reference or discussion about the minimum penalty in the order?
>
> 3) Whether this is a case where minimum penalty need only be levied?"

3. To entertain an appeal under Section 260A of the Act, the court must be satisfied that the case involves a substantial question of law. The tests for finding whether a substantial question of law would arise or not is explained by the Apex Court in the case of **M.Janardhana Rao vs. Joint Commissioner of Income Tax,** 273 ITR 50 (SC). Keeping in view the settled legal position, we have gone through the questions of law framed by the assessee. The questions so framed, in

our view, does not directly or indirectly affects substantial rights of the parties; it is not of general public importance; and it does not call for a discussion for alternative view. This only means the questions framed are pure questions of facts. Therefore, we cannot entertain this appeal filed under Section 260-A of the Income Tax Act, 1961. Accordingly, the appeal requires to be rejected and it is rejected. Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/DK.